

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3737 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DEIVISIONAL CONTROLLER

Versus

PRNKAJ C TRIVEDI

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Appearance:

MR HC RAVAL for Petitioner

MR GIRISH S VYAS for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate is appearing for the petitioner corporation. None is present for the respondent workman.

The facts of the present petition, in short, are that the respondent workman was working as badli workman in the petitioner corporation as conductor. While the

respondent was working at Mahuva Depot, his bus was checked by the checking staff and at that time, it was found that he had recovered fares from certain passengers and had not issued the tickets and misappropriated the amount of fare. Therefore, on the basis of the report of the report made by the checking staff, the petitioner issued a show cause notice to the respondent workman to show cause as to why his name should not be struck off from the wait list badli conductors. Reply thereto was submitted by the respondent and, thereafter, his name was ordered to be deleted from the said list under order dated 2.4.1987. Said order was challenged by the respondent before the labour court by filing reference no. 797 of 1988.

Before the labour court, the respondent workman had raised contention that his name was deleted from the wait list of badli workmen on an allegation of misconduct of misappropriation of the amount without holding departmental inquiry and without giving reasonable opportunity to defend his case. It was also pointed out by the respondent that the bus was local and he was in the said route for the first time and at the time of checking, 80 to 85 passengers were found in the said bus and he was doing the road booking while his bus was checked by the checking party and, therefore, it was ultimately contended by the respondent workman before the labour court that he has not committed any misconduct as alleged.

The labour court, after considering the evidence brought before it, came to the conclusion that though the respondent workman was working as badli conductor, before terminating his services by deleting his name from the wait list of badli workmen, departmental inquiry was required to be held against the respondent and the petitioner corporation was required to follow the procedure and was required to take action in accordance with the principles of natural justice. The labour court has, therefore, set aside the impugned order of termination under its judgment and award dated 15.10.1988 and directed the petitioner corporation to reinstate the respondent workman in service with continuity of service, without back wages. Said judgment and award of the labour court has been challenged by the petitioner corporation before this court by filing this petition under Article 226 and/or 227 of the Constitution of India.

This Court, while admitting the present petition, has issued direction that the name of the respondent

workman should be reinserted in the list of badli workers subject to the ultimate outcome of the present petition and, therefore, naturally, as a result of such directions of this court, the respondent workman must have been reinstated in service by reinserting his name in the said list and now, after a passage of about ten years, it would not be just and proper to disturb the present position of the respondent workman. However, Mr. Raval has submitted that in view of the seriousness of the charge against the respondent workman, the action was taken and since he was a badli workman, departmental inquiry was not initiated against him. He has submitted that before taking the action, show cause notice was issued to the respondent workman and since his explanation was not found to be satisfactory, his name was deleted from the said list.

I have considered the submissions of Mr. Raval, the learned advocate for the petitioner Corporation and also considered the decision reported in 1993 I GLR 443. It is not in dispute that the services of the respondent workman were terminated by the petitioner corporation by deleting his name from the wait list of badli conductors. It is also not in dispute that before taking such harsh action, the petitioner corporation has not initiated the departmental proceedings against the respondent workman. According to my view, mere issuance of the show cause notice cannot be said to be the compliance of the principles of natural justice for taking such a harsh action and on that ground, the labour court has granted reinstatement to the respondent workman, of course, without back wages and, therefore, the impugned judgment and award of the labour court does not require any interference by this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. Mr. Raval has not been able to point any infirmity in the judgment and award of the labour court impugned before this Court. Therefore, the petition is required to be dismissed and accordingly, it is ordered to be dismissed with costs. Ad-interim relief is vacated. Rule is discharged.

While admitting this petition, ad interim relief against the operation of the impugned judgment and award was not granted. Now, since I am dismissing this petition, the petitioner corporation is required to be directed to reinstate the respondent workman in service with all the wages from the date of the impugned judgment and order till the date of his actual reinstatement in service within some stipulated period. Accordingly, in

the interest of justice, the petitioner corporation is directed to reinstate the respondent workman in service with continuity of service and also with wages from the date of the impugned judgment and order passed by the labour court till the date of his actual reinstatement as expeditiously as possible, preferably within three months from the date of receipt of this order.

1.10.1999. (H.K.Rathod,J.)

Vyas